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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,971	12/31/2001	Deanna R. Kathumbi-Jackson	17,697	9577

23556 7590 06/21/2004

KIMBERLY-CLARK WORLDWIDE, INC.
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EXAMINER

REICHLER, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/038,971	Applicant(s) KATHUMBI-JACKSON ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/31/04, 5/25/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3-31-04 has been entered.

Specification

2. The disclosure is objected to because of the following informalities: In the paragraph bridging pages 14-15, all references to the inventors should be avoided. The description should be limited to a factual description of the invention.

Appropriate correction is required.

Claim Objections

3. Claims 1-4 and 6-8 are objected to because of the following informalities: On line 5, "facing" should be --faceable--. Appropriate correction is required.

Claim Language Interpretation

4. It is noted that while “labial pad” is defined on page 4, lines 20-23 that the claims are drawn to an “absorbent article”. “Vestibule” is defined as set forth on page 4, lines 23-29 and page 5, lines 3-5. “Disposition...vestibule” is defined as set forth on page 4, lines 29-30, and page 5, lines 9-14 and page 6, lines 1-5. The various directional terms used in the claims are defined as set forth on page 5, lines 15-30. “Effective surface area” is defined as set forth on page 15, lines 18-21 but is not used in the claims.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-4 and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Osborn PCT ‘078.

The ‘078 device includes an absorbent article 20 having an absorbent 22, 22B and 24 which includes superabsorbent polymer, see page 9, first full paragraph, a length(X or along L), a width(Y and perpendicular to L), a height along a vertical z-axis direction, i.e. the caliper, an upper body facing surface with a surface area, see Figure 1, the absorbent is vertically positioned between a fluid permeable cover and a baffle, see page 14, line 1-page 15, line 20 and definitions supra, i.e. the dimensions of the absorbent are those of elements 22A, 22B and 24 since they can be unitary, the specific lengths, widths, and thus surface areas are disclosed at page 11, last paragraph and page 16, lines 9-15. It is noted the minimum width is considered Y, the “width” is considered 2Y plus the width of the isthmus, the length is considered X or the

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length along L and the surface area is the area of surface as seen in Figure 1. It is also noted that the language “about” allows some leeway from the dimension it modifies. The terminology “slightly” is defined as “to a small degree or extent”. The minimum width can be 15mm, the length can be 50mm, the length along L is slightly less than 50 mm, i.e. no less than “about 40mm” or “about 45mm”, the “width” is 31mm and the surface area is about 1550 square mm. The absorbent article appears to be configured for disposition within the vestibule as claimed in claim 1, see definitions supra and Osborn ‘078, i.e. definition of “absorbent interlabial structure” at page 4, fourth to last line-page 5, line 9 and page 5, fifth to last line. In any case, with regard to the functions, properties and capabilities set forth in claim 1, i.e. “configured...wearer”, and “having...vestibule”, see definitions above and note that the Osborn device includes the claimed structure. Therefore, there is sufficient factual basis for one to conclude that the functions, properties and capabilities of such claimed structure would also be inherent in the same structure of Osborn. See MPEP 2112.01.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn ‘078 in view of Osborn ‘644.

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Applicants claim the minimum width is no less than about 20mm. It is noted that the length is also claimed is no less than about 40 and no greater than about 50mm and the surface area is also claimed as being no less than about 700 square mm but no greater than about 1700 square mm in claim 1 from which claim 8 depends. If the minimum width Y of Osborn '078 is no less than "about" 20 mm then the "width" is no less than "about" 41 mm which is considered to be "about" 40 mm, see claim 1 and discussion of the terminology "about" supra. Therefore to meet the limitations of the claim the length X of the absorbent must be no greater than "about" 41.4 mm whereby the length along L would be slightly less than "about" 41.4 mm, i.e. no less than "about" 40 mm. While Osborn '078 teaches the absorbent may have specific dimensions for the length and width and preferred specific surface areas at page 11, last paragraph and page 16, lines 9-15 (it is noted that "may" also infers "may not" and "preferably" also infers what is "nonpreferably"), that page 11, last paragraph teaches that each panel should be of a suitable size and shape so as to fit comfortably within the interlabial space. Osborn '644 teaches panels which are of a suitable size to comfortably fit within the interlabial space which not only have a minimum width of at least "about" 20 mm but also a length between "about" 35 mm and "about" 120 mm, see, e.g., col. 6, lines 29-31 and 37-59, col. 9, lines 32-36 and Figure 1. To make the length of the panels of Osborn '078 less than "about" 41.4 mm as taught by Osborn '644 would be obvious in view of the recognition that such a length allows the panels to fit comfortably within the interlabial space and the desire of Osborn '078 for such fit.

Response to Arguments

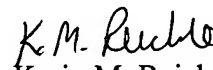
9. Applicant's remarks have been considered but are either deemed moot in that they have not been repeated or are deemed not persuasive for the reasons set forth supra.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
June 15, 2004